



**Billing Code: 4333–15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R2–ES–2019–N137; FXES11140200000–201–FF02ENEH00]**

**Draft Environmental Assessment for an Application for an Incidental Take Permit;  
Diamond Spring Wind Project Habitat Conservation Plan for the Endangered  
American Burying Beetle in Pontotoc and Johnston Counties, Oklahoma**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have received an application from Diamond Spring Wind, LLC for an ITP pursuant to the Endangered Species Act. The application includes habitat conservation plan (HCP) for the American burying beetle (ABB) in Pontotoc and Johnston Counties, Oklahoma. The HCP and associated incidental take permit (ITP) would authorize incidental take resulting from activities covered by the HCP (e.g., construction, infrastructure, maintenance and habitat restoration). We also announce the availability of a draft environmental assessment (dEA) that has been prepared to evaluate the ITP application in accordance with the requirements of the National Environmental Policy Act. We are making the permit application package, including the HCP and dEA, available for public review and comment.

**DATES:** *Submission of Comments:* We will accept comments received or postmarked on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** *Obtaining documents:* The documents this notice announces, as well as any comments and other materials that we receive, are available for public inspection by any of the following means.

- *Internet:* You may obtain electronic copies of the dEA and HCP on the Service's website at <http://www.fws.gov/southwest/es/oklahoma/>.
- *In-Person:* Copies of the dEA and HCP are available for public inspection and review, by appointment (telephone 918-581-7458) and written request only, between the hours of 8 a.m. to 4:30 p.m. at the following locations:
  - U.S. Fish and Wildlife Service, 500 Gold Avenue SW, Room 6034, Albuquerque., NM 87103
  - U.S. Fish and Wildlife Service, 9014 East 21st Street, Tulsa, OK 74129.

*Submitting comments:*

You may submit written comments by one of the following methods:

- *Email:* [okes\\_nepa@fws.gov](mailto:okes_nepa@fws.gov); or
- *Facsimile:* 918-581-7467, Attn: OKES Diamond Spring Wind HCP EA.
- *U.S. mail:* Field Supervisor, Oklahoma Ecological Services Field Office (at the Tulsa street address above).

Please specify that your information request or comments concern the Diamond Spring Wind EA/HCP.

**FOR FURTHER INFORMATION CONTACT:** Jonna Polk, by U.S. mail at the U.S. Fish and Wildlife Service, Oklahoma Ecological Services Field Office (at the Tulsa street address above), or by phone at 918-581-7458. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), have received an application from Diamond Spring Wind, LLC for an incidental take permit (ITP) pursuant to section 10(c) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1539(c)). The application includes a habitat conservation plan (HCP) for the American burying beetle (ABB) in Pontotoc and Johnston Counties, Oklahoma. Diamond Spring Wind, LLC is developing the Diamond Spring Wind project in Pontotoc and Johnston Counties, Oklahoma. The ITP would authorize incidental take of ABB resulting from activities associated with construction of approximately 137 wind turbines (i.e., 112 primary and 25 alternate turbine locations); associated infrastructure facilities, including roads, underground collector lines, meteorological towers, a substation, a 345-kV transmission line, crane paths, and/or maintenance; and habitat restoration activities. We also announce the availability of a draft environmental assessment (dEA) that has been prepared to evaluate the permit application in accordance with the requirements of the National Environmental Policy Act, as amended (NEPA; 42 U.S.C. 4321 *et seq.*), and its implementing regulations (40 CFR 1501.7, 1506.6, and 1508.22). We are making the ITP application package, including the HCP and dEA, available for public review and comment.

## **Background**

Section 9 of the ESA prohibits “take” of fish and wildlife species listed as endangered or threatened (16 U.S.C. 1531–1544). Under section 3 of the ESA, the term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term “harm” is further defined by regulation as an act which actually kills or injures wildlife. Such acts

may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

Under section 10(a)(1)(B) of the ESA, the Secretary of the Interior may authorize the taking of federally listed species if such taking occurs incidental to otherwise legal activities and where a conservation plan has been developed under ESA section 10(a)(2)(A) that describes (1) the impact that will likely result from such taking; (2) the steps an applicant will take to minimize and mitigate that take to the maximum extent practicable, and the funding that will be available to implement such steps; (3) the alternative actions to such taking that an applicant considered and the reasons why such alternatives are not being utilized; and (4) other measures that the Service may require as being necessary or appropriate for the purposes of the plan. Issuance criteria under section 10(a)(2)(B) for an incidental take permit requires the Service to find that (1) the taking will be incidental to otherwise lawful activities; (2) an applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (3) an applicant has ensured that adequate funding for the plan will be provided; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) the measures, if any, we require as necessary or appropriate for the purposes of the plan will be met. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively.

### **Proposed Action**

The proposed action is the issuance of a 5-year ITP to authorize incidental take of ABB resulting from activities covered by the HCP and associated with construction of

the proposed Diamond Spring Wind project in Johnston and Pontotoc Counties, Oklahoma. The plan area is 930.4 acres (ac), of which 568.74 ac are considered favorable ABB habitat and 361.67 ac are considered unfavorable ABB habitat.

The proposed HCP, which must meet the requirements in section 10(a)(2)(A) of the ESA, was developed in coordination with the Service and would be implemented by Diamond Spring Wind, LLC. The proposed action will allow for Diamond Spring Wind, LLC to comply with the ESA, and their renewable wind-generated energy would be made available to public utilities. Covered activities in the HCP include construction of approximately 137 wind turbines (including 112 primary and 25 alternate turbine locations); associated infrastructure facilities, including roads, underground collector lines, meteorological towers, a substation, a 345-kV transmission line, an operation and maintenance building, and construction areas; and habitat restoration activities. The applicant proposes to minimize and mitigate impacts to ABB through conservation measures identified in the HCP, as well as through the purchase of 177.92 credits (ac) at a Service-approved conservation bank with a service territory that includes the plan area, or through the undertaking of other measures approved by the Service consistent with existing mitigation policies.

### **Alternatives**

We considered one alternative to the proposed action as part of the environmental assessment process: the no-action alternative. The no-action alternative represents estimated future conditions without the application for, or issuance of, an ITP. No-action represents the status quo.

Under the no-action alternative, Diamond Spring Wind, LLC would comply with the ESA by avoiding impacts (take) to the ABB where practicable. If take could not be avoided and there is Federal involvement in the project (for example, a Federal permit such as a Corps of Engineers section 404 Clean Water Act permit, authorization, or funding exists), Diamond Spring Wind, LLC could receive take coverage through a biological opinion issued by the Service to the Federal action agency. If there is no Federal involvement in the project, Diamond Spring Wind, LLC could apply for an ITP from the Service.

### **Next Steps**

We will evaluate the permit application, associated documents, and comments we receive to determine whether the permit application meets the requirements of the ESA, NEPA, and implementing regulations. If we determine all requirements are met, we will approve the HCP and issue the ITP under section 10(a)(1)(B) of the ESA to Diamond Spring Wind, LLC for take of ABB in accordance with the terms of the HCP and specific terms and conditions of the authorizing permit. We will not make our final decision until after the end of the 30-day public comment period, and we will fully consider all comments we receive during the public comment period.

### **Public Availability of Comments**

Written comments we receive become part of the public record associated with this action. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, NEPA, and Service and Department of the Interior policies and procedures. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that the entire

comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

**Authority**

We provide this notice under the authority of section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Dated: October 10, 2019

Amy Lueders

*Regional Director, Southwest Region.*

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